

## Message Text

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PAGE 01 EC BRU 09531 292338Z

70

ACTION EUR-12

INFO OCT-01 NEA-10 ISO-00 AGR-05 AGRE-00 AID-05 CEA-01

CIAE-00 COME-00 EB-07 FRB-03 INR-07 NSAE-00 CIEP-01

SP-02 STR-04 TRSE-00 LAB-04 SIL-01 SAM-01 OMB-01

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E.O.11652: N/A

TAGS: ETRD, EIND, ECEM, EEC

SUBJECT: US EC DISCUSSIONS ON PHOSPHATE COMPLAINT

REF: (A) PARIS 21828 (B) EC BRUSSELS 7548 (C) PARIS 22681

(D) STATE 194150 (E) STATE 201668

1. SUMMARY: US REPRESENTATIVES MADE A DETAILED RESPONSE TO THE COMMISSION'S NOTE VERBALE ON US PHOSPHATE PRICING PRACTICES (REF B) BY PRESENTING AN ELABORATED VERSION OF ARGUMENTS IN REF E, AS WELL AS DETAILED DATA ON US COMPANIES' RECENT PRICES. COMMISSION OFFICIALS APPRECIATED INFORMATION, BUT DOUBTS REMAIN AND THERE IS A POSSIBILITY OF PROSECUTION UNDER ROME TREATY ARTICLE 85. IT MAY BE NECESSARY TO DISCUSS THE ISSUE FURTHER AT THE OCTOBER 20-21 US-EC CONSULTATIONS. END SUMMARY.

2. US DEPARTMENT OF JUSTICE OFFICIAL JOEL DAVIDOW MET ON INFORMAL BASIS WITH EC COMMISSION OFFICIALS SEPT. 24 TO DISCUSS PROBLEMS FACED BY EUROPEAN FERTILIZER PROCESSORS. COMMISSION WAS RE-  
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PAGE 02 EC BRU 09531 292338Z

PRESENTED BY LOERKE, US DESK OFFICER; PAPPALARDO, CHIEF OF

INVESTIGATIONS FOR THE COMPETITION DIRECTORATE GENERAL; AND  
MALTZAHN, CHIEF ADVISER TO THE DG FOR INDUSTRY.

3. EC OFFICIALS RESTATED COMPLAINT CONTAINED IN NOTE VERBALE  
(REF B) THAT DISCRIMINATORY PRICING BY TWO US WEBB-POMERENE  
EXPORT ASSOCIATIONS, PHOSROCK AND PHOSCHEM, WAS HARMING EUROPEAN  
PHOSPHATE INDUSTRY AND EXPOSING IT TO TAKEOVERS FROM US COMPETITORS.  
COMMISSION SIDE SAID THAT IF PHOSROCK WAS A PRICE CARTEL UNDER  
ARTICLE 85 OF THE TREATY OF ROME, THE ONLY RELEVANT CONCERN WAS  
THE EUROPEAN PRICE. HOWEVER, THE COMMISSION WAS INTERESTED IN  
PRICE COMPARISONS. OFFICIALS EXPLAINED THAT THEY HAD SOME  
DIFFICULTY OBTAINING US PRICE DATA DIRECTLY FROM THE COMPANIES  
AND WELCOMED THE VISIT OF MR. DAVIDOW WHO TRANSMITTED PRICE  
DATA (VOLUNTARILY OFFERED BY US COMPANIES) AS A GESTURE TOWARDS EC-US  
COOPERATION ON ANTI-TRUST MATTERS.

4. EC COMPETITION OFFICIALS WERE ALSO LOOKING AT PHOSCHEM AND  
SAID THEY WOULD APPRECIATE ANY INFORMATION WHICH MIGHT INVOLVE  
A VIOLATION UNDER ARTICLE 85. THEY ARE LOOKING INTO TAKEOVERS  
OF EC FIRMS BY US PHOSPHATE PRODUCERS. THEY SAID, HOWEVER,  
THAT THE INVESTIGATION IN ALL THREE OF THESE AREAS (PHOSROCK,  
PHOSCHEM AND TAKEOVERS) WAS MOVING FORWARD SLOWLY.

5. DAVIDOW EXPLAINED THAT US HAS ONLY A SMALL SHARE OF THE  
EUROPEAN MARKET FOR PHOSPHATE ROCK. PHOSROCK, CONSEQUENTLY,  
COULD NOT BE A PRICE LEADER. IT WAS PROBABLY FOLLOWING THE  
PRICES SET BY THE DOMINANT SUPPLIER, MOROCCO. MEMBERS OF  
PHOSROCK WERE NOT CHARGING PRICES ANY HIGHER THAN THOSE OF  
INDEPENDENT US EXPORTERS, AND ABOUT HALF OF US SALES TO EUROPE  
ARE MADE BY INDEPENDENTS. ON THE FERTILIZER SIDE PRICES ARE  
BEING HELD DOWN BY GENERAL ECONOMIC CONDITIONS AND THE DROUGHT.  
PHOSCHEM HAD TOLD DAVIDOW THAT FOR THREE MONTHS IN A ROW IT  
HAD BEEN UNABLE TO RECEIVE ITS ASKING PRICE FOR FERTILIZER.  
DAVIDOW SAID THAT JUSTICE HAD EXAMINED TWO HYPOTHESE:

(1) THAT THE US COMPANIES HAD AGREED TO FOLLOW THE MOROCCAN  
PRICE INCREASE IN 1973 AND 1974 AND (2) THAT THE US COMPANIES  
HAD AGREED TO LIMIT SALES TO EUROPE IN RETURN FOR MOROCCAN  
AGREEMENT TO STAY AWAY FROM THE US MARKET. DAVIDOW EXPLAINED  
THAT WHILE FEDERAL GRAND JURY IS STILL INVESTIGATING THE PHOSPHATE  
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PAGE 03 EC BRU 09531 292338Z

INDUSTRY, THE DOCUMENTS OBTAINED BY JUSTICE DO NOT SO FAR  
SUPPORT EITHER ALLEGATION.

6. ON THE SUBJECT OF ALLEGED TAKEOVERS OF EUROPEAN FIRMS,  
DAVIDOW SAID THAT SINCE IRISH AND FRENCH PHOSPHATE ROCK AND  
FERTILIZER PURCHASES FROM THE US ARE INSIGNIFICANT, THERE WAS  
LITTLE LOGIC IN ALLEGATIONS THAT LOW US FERTILIZER PRICES AND  
HIGH ROCK PRICES WERE ELEMENTS OF A CONSPIRACY TO TAKE-OVER OF

EUROPEAN COMPANIES, SPECIFICALLY IN THOSE COUNTRIES. MOREOVER, HE QUESTIONED WHY THE POLICIES OF TWELVE US PHOSPHATE COMPANIES SHOULD BE DIRECTED TOWARD HELPING ONE COMPANY, AGRICO, TAKE OVER EUROPEAN COMPANIES? DAVIDOW SAID NEITHER OF THE TWO MAJOR EC COMPANIES ACQUIRED BY AGRICO, COFAZ OR GOULDING, HAD INDICATED THAT FINANCIAL DURESS WAS THE REASON FOR SALE. RATHER THEY HAD AN INTEREST IN A PARTNERSHIP WHICH WOULD GIVE THEM ASSURED SUPPLY AT A STEADY PRICE.

7. COMMISSION OFFICIALS REPLIED THE QUESTION OF MARKET POWER WAS IRRELEVANT. IF THEY COULD PROVE THAT COMPANIES HAD AGREED TO FIX PRICES (I.E. FORM A WEBB-POMERENE ASSOCIATION) IN THE EC MARKET, THIS WAS ENOUGH FOR PROSECUTION UNDER ARTICLE 85 OF THE ROME TREATY. THEY INSISTED, HOWEVER, THAT THEY HAD NO INTENTION OF LAUNCHING A GENERAL ATTACK ON US WEBB-POMERENE ASSOCIATIONS. HOWEVER, IN THIS CASE THEY WERE UNDER POLITICAL PRESSURE AND THEY HAD SOME EVIDENCE OF PRICE DISCRIMINATION BY US SELLERS. IN ADDITION THE PRESS HAD REPORTED THAT MOROCCO LOOKS TO US COMPANIES FOR INCREASED COOPERATION IN SALES TO THE EUROPEAN MARKET AND WOULD EVEN LIKE TO FORM JOINT US/MOROCCAN VENTURES FOR THAT PURPOSE.

8. THE EC OFFICIALS ADDED THAT THE DROUGHT IN EUROPE HAS COMPOUNDED THE PROBLEM AND INTENSIFIED THE PRESSURE ON THEM TO MOVE QUICKLY IN THIS AREA. THEY EXPRESSED THEIR INTENTION TO STUDY MATERIAL PRESENTED BY DAVIDOW. BOTH SIDES AGREED THAT FURTHER DISCUSSIONS COULD TAKE PLACE AT THE TIME OF THE US-EC CONSULTATIONS IN OCTOBER IF NECESSARY. HINTON

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